IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: CEA No.46 OF 2007
DATE OF DECISION: 30.10.2007

Commissioner of Central Excise Commissionerate, Chandigarh. .....Appellant

VERSUS

M/s Vardhman Industries Ltd., Village Beopror, Rajpura (Punjab) .....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Kaushik, Advocate
for the appellant.

M.M.KUMAR

We have heard the learned counsel for the revenue-appellant at a considerable length and find that the order dated 15.4.2004 passed by the Commissioner (Appeals) was challenged before the Customs Excise & Service Tax Appellate Tribunal, New Delhi. The appeal of the revenue-appellant was dismissed vide final order No.1111 of 2004-NB(A) on 11.10.2004. There are categorical findings recorded by the Commissioner that the assessee-respondent had requested for assessment of their goods on provisional basis in respect of the period from 1.4.2002 to 31.3.2003 on the ground that the quantum of deductions e.g. cash discount, quantity discount and rate difference were not known at the time of removal of goods which came to be known at a later date. The request for provisional assessment was granted vide letter dated 18.9.2002 which was finalized on 22.1.2003. The returns were later scrutnized by the Range Officer finally on 7.2.2003 and as a result of finalization of assessments a refund amounting to Rs.347679/- became due to the assessee-respondent. Accordingly, refund orders were passed on 22.4.2003. The assessee-respondent were called upon to submit the evidence to the effect that the burden of duty was not passed on to any other person, failing which the refund amount was to be credited to the Consumer Welfare Fund. The adjudicating authority vide its order dated 1.8.2003 held that the refund amount of Rs.347679/- sanctioned

vide order dated 22.4.2003 be credited to the Consumer Welfare Fund. The revenue-appellant filed the appeal and the assessee-respondent submitted cross-objections. Placing reliance on its earlier order dated 16.4.2004, it has been held by the Commissioner (Appeals) as well as the Tribunal that once it has been proved as a fact that incidence of tax has not been passed on to the consumer then the refund by credit notes has to go back to them only. In such a case the principle of unjust enrichment would not be attracted because the duty has not been collected and pocketed by the assessee-respondent. In our view diverting such an amount to the Consumer Welfare Fund would be wholly unauthorized and Article 265 of the Constitution would make such an order wholly unconstitutional. Therefore, the appeal filed by the revenue-appellant is without any substance and the same is accordingly dismissed.

(M.M.KUMAR)
JUDGE

30.10.2007
Vimal

(AJAY KUMAR MITTAL)
JUDGE